

HON. TANA LIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WASTE ACTION PROJECT,

Plaintiff,

v.

WILLIS ENTERPRISES, INC.; PORT OF
GRAYS HARBOR,

Defendants.

Case No. 3:20-CV-05913-TL

~~[PROPOSED]~~ CONSENT DECREE

I. STIPULATIONS

WHEREAS, Plaintiff Waste Action Project filed a complaint against Defendant Willis Enterprises, Inc. (“Willis”) alleging violations of the Clean Water Act (“CWA”), 33 U.S.C. § 1251 et seq., relating to discharges of stormwater associated with industrial activities and other pollutants, including spilled wood chips, from Willis’s upland facility located at 400 Airport Way SW, Hoquiam, WA 98550 (the “Facility”) and a shipping pier, access pier and trestle on Grays Harbor leased from the Port of Grays Harbor (collectively referred to as “the Dock” or “Terminal 3”) (the “Facility” and “Dock” together constituting the “Site”), and seeking declaratory and injunctive relief, civil penalties, and attorneys’ fees and costs.

WHEREAS, Waste Action Project filed an amended complaint adding allegations of CWA violations at the Dock against the Port of Grays Harbor (“the Port”).

CONSENT DECREE
No. 3:20-cv-05913-TL

1

Smith & Lowney, p.l.l.c.
2317 East John St.
Seattle, Washington 98112
(206) 860-2883

1 WHEREAS, the Port filed a Cross Claim with allegations against Willis, including
2 allegations of violation of covenants in the Access and Dock Usage Agreement and certain
3 incorporated portions of Port Lease No. 1058.

4 WHEREAS, Waste Action Project, Willis and the Port (collectively “the Parties”) agree
5 that settlement of these matters is in the best interest of the Parties and the public, and that entry
6 of this Consent Decree is the most appropriate means of resolving this action.

7 WHEREAS, the Parties stipulate to the entry of this Consent Decree without trial or
8 adjudication of any issues of fact or law regarding Plaintiff’s claims that remain undecided or
9 unstipulated, and without any admissions other than those expressly provided in this Consent
10 Decree.

11 WHEREAS, the Parties desire to settle, resolve, and release all claims that the Parties
12 have or could have asserted against the others caused by or arising from an action or inaction
13 attributable to Willis or the Port.

14 WHEREAS, upon expiration of this Consent Decree, all claims against Willis and the
15 Port will be dismissed with prejudice.

16 DATED this ___th day of July, 2022

17 CASCADIA LAW GROUP

SMITH & LOWNEY PLLC

18
19 By s/Tisha Pagalilauan
Tisha Pagalilauan, WSBA #28217
20 Attorney for Defendant Willis
Enterprises, Inc.

By s/Marc Zemel
Marc Zemel, WSBA #44325
21 Attorney for Plaintiff
Waste Action Project

1
2 WILLIS ENTERPRISES, INC.

3 By 

4 Todd Charlton

5 Vice President, Operations

WASTE ACTION PROJECT

6 By 

7 Greg Wingard

8 Executive Director

9 INGRAM, ZELASKO AND GOODWIN

10 By s/Arthur A. Blauvelt III

11 Arthur A. Blauvelt III, WSBA #8260

12 Attorney for Defendant Port of Grays
13 Harbor

14 PORT OF GRAYS HARBOR

15 By 

16 Gary G. Nelson

17 Executive Director

18 **I. ORDER AND DECREE**

19 This matter came before the Court upon the foregoing stipulations of the Parties. Having
20 considered the stipulations, the United States' notice of non-objection (Dkt. No. 33), the Rose
21 Foundation's letter (Dkt. No. 32-1 at 16–17), and the promises set forth below, the Court hereby
22 ORDERS, ADJUDGES, and DECREES as follows:

- 23 1. This Court has jurisdiction over the Parties and subject matter of this action.
- 24 2. Each signatory for the Parties certifies for that party that he or she is fully
25 authorized by the party or parties he or she represents to enter into the terms and conditions of
26 this Consent Decree and to legally bind the party or parties, their successors in interest and
assigns of the parties to it.

1 3. This Consent Decree applies to and binds the Parties and their successors in
2 interest and assigns.

3 4. This Consent Decree and any injunctive relief ordered within will apply to the
4 operation, oversight, or both by Willis of the Facility, including those portions currently subject
5 to National Pollutant Discharge Elimination System Permit No. WAR011407 (the “NPDES
6 permit”) and the Dock or to the Port, as specified herein.

7 5. This Consent Decree is a full and complete settlement and release of (i) all the
8 claims alleged in the Complaint, the Amended Complaint and the Port’s Crossclaims for the
9 alleged acts or omissions, existing as of the date of entry of this Consent Decree, that the
10 Complaint, Amended Complaint and/or the Port’s Crossclaims asserted, including but not
11 limited to, under the Clean Water Act, 33 U.S.C. §§ 1251-1387, and (ii) all the claims that could
12 have been alleged, arising from operations of the Facility against Willis and the Port, their
13 employees, agents, successors and assigns. Upon termination of this Consent Decree, these
14 claims will be released and dismissed with prejudice.

15 6. The Parties agree that the obligations undertaken under Paragraphs 7, 8, 9 and 10
16 are in full and complete satisfaction of all the claims covered by this decree.

17 7. Injunctive Relief as to Willis Enterprises, Inc.:

18 a. Willis agrees to comply with the terms and conditions of the Industrial
19 Stormwater General Permit (ISGP) and any successor or modified permit applicable to the
20 Facility.

21 b. To mitigate the track-out of sediment from the Facility to Airport Way,
22 between October 15 and July 15 of each year, each day when vehicles exit the Facility, Willis
23 will sweep paved areas in the vicinity of Facility exits/entrances, including areas within the
24 Facility and on Airport Way that are immediately adjacent to the exists/entrances for the Facility.
25
26

1 c. Willis certifies that it has sealed an abandoned stormwater conveyance
2 pipe located underground at the southeast corner of the upland portion of the Facility in a manner
3 that prevents the pipe from conveying water.

4 d. Within seven (7) days of entry of the Consent Decree, Willis will apply for
5 ISGP coverage for the Dock. Willis agrees to implement ISGP terms and conditions on the
6 Dock while its ISGP application is pending. If Ecology grants separate ISGP coverage for the
7 Dock, Willis agrees to comply with its terms and conditions. If Ecology does not grant separate
8 ISGP coverage for the Dock, Willis will incorporate the Dock into ISGP No. WAR011407 and
9 implement its terms and conditions there. Willis will maintain ISGP coverage for the Dock until
10 either (1) Willis ceases operations on the Dock, does not reasonably intend to resume operations
11 on the Dock and the Department of Ecology approves a Notice of Termination under ISGP
12 Condition S13, or (2) Willis validly transfers its ISGP coverage to another permittee, consistent
13 with ISGP Condition S2.D (“Transfer of Permit Coverage”).

14 1. As part of ISGP implementation on the Dock, Willis will establish at least
15 one designated stormwater discharge monitoring point for the Dock, located on the
16 shipping pier portion of the Dock.

17 e. Willis certifies that since Waste Action Project filed the complaint in this
18 matter, Willis has conducted a thorough inspection of the entire conveyor system on the Dock
19 and identified any gaps or damage that would allow wood chips to escape during a loading
20 operation.

21 1. Willis certifies that this conveyor system inspection included locations of
22 excess lubricant or oil that may become exposed to stormwater. Willis certifies that in
23 response to this inspection, it made the following improvements to mitigate direct
24 discharges of wood chip materials to Grays Harbor: (1) At the transfer point from belt 2
25 to belt 3 tail roll, extended side walls and installed roofing, and added belt skirting for a
26 wind break and containment; (2) extended walls of the head roll on belt 3 for transfer to

1 the belt 4 tail roll; (3) extended side walls, belt skirting and roofing on the tail roll of belt
 2 4; (4) extended the head roll walls of belt 4; (5) replaced the belt roof of belt 5; (6)
 3 extended the hood of belt 5 to the belt cover hoops; (7) heightened and extended the wall
 4 from the transfer belt 6 head roll to the tail roll of belt 7; (8) extended the front wall of the
 5 belt 7 head roll to the belt 8 tail roll; (9) added belt skirting for containment on the bottom
 6 of the hood on belt 7; (10) installed a belt scraper on the head roll of belt 6; and (11)
 7 requires Willis customers to utilize barges with bin walls 20-25 feet in height. Willis
 8 commits to regularly maintain these improvements and the rest of the conveyor system,
 9 and promptly make necessary repairs to keep the improvements functioning effectively to
 10 minimize wood chip loss.

11 2. In addition, immediately upon entry of the Consent Decree, Willis will do
 12 the following: (1) Willis will utilize a human observer during operations of the wood chip
 13 conveyor system, who will place bins under falling chips to collect them, as needed; and
 14 (2) Willis will load all barges to the center of the barge while keeping the chip mound
 15 under the loading spout. At the bin wall, wood chip product will be loaded at or below
 16 three feet of the rail cap, but the mound at the center of barge may be higher than the rail
 17 cap.

18 3. In addition to the improvements already made and agreed to, with the
 19 assistance of a qualified consultant, within twenty-one (21) days of entry of this Consent
 20 Decree, Willis will consider the following remedies to the following issues: (1) due to the
 21 periodic continuance of chips onto the return belt, Willis will consider installing a
 22 diagonal rubber belt plow on the return belt; (2) due to the possibility that wood chips
 23 may fall or blow into Grays Harbor during barge loading, Willis will consider specifying
 24 the optimum loading spout position (i.e. horizontally, vertically and angularly) to prevent
 25 wood chip escape.
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1 f. Within seven (7) days of entry of the Consent Decree, Willis will request
2 the Port of Grays Harbor (the Port) to conduct a thorough inspection of the entire shipping pier
3 portion of the Dock to identify any openings in the floor or walls that would allow stormwater
4 runoff to flow into Grays Harbor by any path other than via the “sediment planter” that is
5 designed to receive loading dock stormwater runoff. If the Port does not conduct this inspection
6 within thirty (30) days of Willis’s request, Willis will promptly perform the inspection.
7 Immediately after the inspection and before the next use of the conveyor system for barge
8 loading, Willis will seek approval from the Port to (1) plug any gaps in the concrete floor and
9 breaks in the wall sides, and (2) Willis will implement BMPs for keeping wood chips out of the
10 effluent discharged from the “sediment planter” while also allowing for the collection of
11 representative samples. Willis certifies that it is currently evaluating additional BMPs with the
12 assistance of a qualified consultant, including consideration of measures such as grafting, risers
13 with grates or inserts for the “sediment planter” on the Dock. Willis will include the additional,
14 selected BMPs in the SWPPP that will be provided to WAP for review and comment.

15 g. Within seven (7) days of entry of the Consent Decree, with assistance
16 from a qualified consultant, Willis will develop and implement a wood chip spill prevention plan
17 that identifies all applicable methods to prevent wood chips and dust spills and their discharge to
18 Grays Harbor from any part of the Dock. Willis will incorporate the wood chip spill prevention
19 plan into the Stormwater Pollution Prevention Plan (SWPPP) for the Dock. Willis will also
20 continue to implement sediment control measures consistent with applicable best management
21 practices (BMPs) under the ISGP.

22 h. Within seven (7) days of entry of the Consent Decree, Willis will
23 implement the following operational improvements for the Facility:

- 24 1. During all barge loading, Willis will assign staff to observe the conveyor
25 and loading to note the escape of any chips onto the Dock or into Grays Harbor. If any
26 appreciable losses from the Dock to Grays Harbor occur, the observer will deploy bins to

1 contain small spills as they occur, and temporarily cease loading if bins are ineffective at
2 containing a spill.

3 2. Willis will use a vacuum sweeper to pick up particles on the Dock
4 quarterly. In addition, by the next working day shift following the completion of each
5 barge loading, Willis will also use a smaller sweeper or hand broom to pick up all visible
6 chips and dust in areas inaccessible by Willis's vacuum sweeper.

7 3. Between October 15 and July 15 each year, by the next working day shift
8 following the completion of each barge loading, Willis will deploy a skimmer in the
9 "sediment planter" to remove visible, floating chips to the extent the planter has water
10 and chips present.

11 4. Willis certifies that it has developed guidance sheets for personnel
12 responsible for implementing the site equipment and operation improvements, and Willis
13 will ensure the guidance sheets are followed, including through personnel training at the
14 time of hiring and as an annual refresher retraining for all responsible personnel.

15 5. Willis will update the SWPPP to reflect all site and operational
16 improvements.

17 i. Willis will promptly notify Waste Action Project upon completion of all
18 remaining Dock-related work described in this Consent Decree and will permit Waste Action
19 Project representatives onto the site to observe the modifications and receive a demonstration of
20 all operating features.

21 j. Within thirty (30) days of entry of this Consent Decree, Willis will share a draft of
22 its updated SWPPP incorporating the Dock and all related settlement conditions with Waste
23 Action Project. Within thirty (30) days of receipt of the draft SWPPP, Waste Action Project may
24 provide comments or suggestions to the draft SWPPP. Within fourteen (14) days of receiving
25 Waste Action Project's comments, Willis must either incorporate Waste Action Project's
26 comments into the final SWPPP or respond to each comment not incorporated, in detail, in

1 writing. Within seven (7) days of entry of the Consent Decree, Willis will provide \$3,000.00
2 (three thousand dollars) to Waste Action Project for its consultant to perform this review.

3 8. Injunctive Relief as to the Port of Grays Harbor:

4 a. The Port will work cooperatively with Willis Enterprises, Inc. and the
5 Washington Department of Ecology to ensure compliance with the terms and conditions of the
6 Industrial Stormwater General Permit and any successor, additional, or modified permit at the
7 Terminal 3 shipping pier.

8 b. The Port will not unreasonably withhold authorization and cooperation for Willis
9 to modify or upgrade the stormwater infrastructure at Terminal 3 or implement stormwater
10 BMPs (operational, structural or treatment) for the Terminal 3 shipping pier.

11 c. The Port will not allow any industrial activities to occur at Terminal 3, other than
12 Willis's activities, unless the non-Willis industrial activity is covered by an Industrial
13 Stormwater General Permit issued by the Department of Ecology to the Port or the non-Willis
14 entity for those non-Willis industrial activities. "Industrial activity" as used in this paragraph
15 means "Industrial Activity" as defined by the ISGP in Appendix 2.

16 d. The Port will maintain gate access protocol for Terminal 3 to reasonably prevent
17 unauthorized access to the pier.

18 e. The Port will not be deemed to have violated the above by any of the following
19 activities at the Terminal 3 shipping pier as long as the Port keeps a record of dates, times, entity
20 and type of activity:

- 21 1. Allowing a vessel or barge to merely tie up at the Terminal 3 shipping pier
22 for either the convenience or safety of that vessel or barge ("lay status").
- 23 2. Allowing a vessel or barge to tie up at the Terminal 3 shipping pier for the
24 purposes of conducting in-hull work, provided the in-hull work will not
25 impact stormwater discharge from the Terminal 3 shipping pier or cause a
26

1 process water or wastewater discharge to Grays Harbor. “In-hull work”
2 means work conducted wholly inside the vessel.

3 9. Payment in Lieu of Penalty:

4 a. Within fourteen (14) days of entry of this Consent Decree by the Court, Willis
5 will make a payment in the amount of one hundred and seventy-five thousand dollars (\$175,000)
6 to the Rose Foundation for Communities and the Environment for projects to improve the water
7 quality in the Hoquiam River watershed, including Grays Harbor, as described in Exhibit 1 to
8 this Consent Decree. Unless the parties mutually agree to wire payments, the payment will be in
9 check form to the Rose Foundation for Communities and the Environment, Attention: Tim Little,
10 201 4th Street, Suite 102, Oakland, CA 94607. Payments will include the following reference in
11 a cover letter or on the check: “Consent Decree, Waste Action Project v. Willis Enterprises, Inc.,
12 W.D. Wash. No. 3:20-cv-05913-TL.” A copy of the check(s) and cover letter(s), if any, will be
13 sent simultaneously to WAP and its counsel.

14 10. Costs of Litigation:

15 a. Within fourteen (14) days of entry of this Consent Decree by the Court, Willis will
16 pay one hundred eighteen thousand nine hundred dollars (\$118,900.00) to cover WAP’s
17 litigation fees, expenses and costs related to claims against Willis (including reasonable attorney
18 and expert witness fees) by check payable and mailed to Smith & Lowney, PLLC, 2317 East
19 John St., Seattle, WA 98112, Attn: Marc Zemel. Willis’s payment will be in full and complete
20 satisfaction of any claims WAP has or may have, either legal or equitable, and of any kind or
21 nature whatsoever, for fees, expenses, and costs incurred in this litigation against Willis.

22 b. Within fourteen (14) days of entry of this Consent Decree by the Court, the Port
23 will pay twelve thousand five hundred and fifty dollars (\$12,550.00) to cover WAP’s litigation
24 fees, expenses and costs related to claims against the Port (including reasonable attorney and
25 expert witness fees) by check payable and mailed to Smith & Lowney, PLLC, 2317 East John
26 St., Seattle, WA 98112, Attn: Marc Zemel. The Port’s payment will be in full and complete

1 satisfaction of any claims WAP has or may have, either legal or equitable, and of any kind or
2 nature whatsoever, for fees, expenses, and costs incurred in this litigation against the Port.

3 11. The payments described under Paragraphs 9 and 10 above shall be in full and
4 complete satisfaction of any claims Waste Action Project has or may have against Willis and the
5 Port, either legal or equitable, and of any kind or nature whatsoever, for fees, expenses, and cost
6 incurred in this litigation, or for civil penalties, or payments in lieu of civil penalties pursuant to
7 a supplemental environmental project under the CWA.

8 12. A force majeure event is any event outside the reasonable control of Willis or the
9 Port that causes a delay in performing tasks required by this decree that cannot be cured by due
10 diligence. Delay in performance of a task required by this decree caused by a force majeure
11 event is not a failure to comply with the terms of this decree, provided that the party required by
12 this decree to perform the task timely notifies Plaintiff of the event; the steps that the party will
13 take to perform the task; the projected time that will be needed to complete the task; and the
14 measures that have been taken or will be taken to prevent or minimize any impacts to stormwater
15 quality resulting from delay in completing the task.

16 Willis and the Port will notify Plaintiffs of the occurrence of a force majeure event as
17 soon as reasonably possible but, in any case, no later than fifteen (15) days after the occurrence
18 of the event. In such event, the time for performance of the task will be extended for a
19 reasonable period of time following the force majeure event.

20 By way of example and not limitation, force majeure events include

- 21 a. Acts of God, war, insurrection, or civil disturbance;
- 22 b. Earthquakes, landslides, fire, floods;
- 23 c. Actions or inactions of third parties over which defendants have no
24 control;
- 25 d. Unusually adverse weather conditions;
- 26 e. Restraint by court order or order of public authority;

1 f. Strikes;

2 g. Any permit or other approval sought by Willis from a government
3 authority to implement any of the actions required by this Consent Decree
4 where such approval is not granted or is delayed, and where Willis has
5 timely and in good faith sought the permit or approval; and

6 h. Litigation, arbitration, or mediation that causes delay.

7 13. This Court retains jurisdiction over this matter. While this Consent Decree
8 remains in force, this case may be reopened without filing fee so that the parties may apply to the
9 Court for any further order that may be necessary to enforce compliance with this decree or to
10 resolve any dispute regarding the terms or conditions of this Consent Decree. In the event of a
11 dispute regarding implementation of, or compliance with, this Consent Decree, the parties must
12 first attempt to resolve the dispute by meeting to discuss the dispute and any suggested measures
13 for resolving the dispute. The provisions of CWA section 505(d), 33 U.S.C. § 1365(d),
14 regarding awards of costs of litigation (including reasonable attorney and expert witness fees) to
15 any prevailing or substantially prevailing party, will apply to any proceedings seeking to enforce
16 the terms and conditions of this Consent Decree.

17 14. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent
18 judgment can be entered in a Clean Water Act suit in which the United States is not a party prior
19 to forty-five (45) days following the receipt of a copy of the proposed consent judgment by the
20 U.S. Attorney General and the Administrator of the U.S. EPA. Therefore, upon the filing of this
21 Consent Decree by the parties, Plaintiff will serve copies of it upon the Administration of the
22 U.S. EPA and the Attorney General.

23 15. This Consent Decree will take effect upon entry by this Court. It terminates three
24 (3) years after entry.

25 16. All Parties have participated in drafting this Consent Decree.

26 17. This Consent Decree may be modified only upon the approval of the Court.

1 18. If for any reason the Court should decline to approve this Consent Decree in the
2 form presented, this Consent Decree is voidable at the discretion of either party. The Parties
3 agree to continue negotiations in good faith in an attempt to cure any objection raised by the
4 Court to entry of this Consent Decree.

5 19. All communications between the parties shall be through legal counsel.
6 Notifications or copies required by this Consent Decree to be made to Plaintiff shall be delivered
7 electronically to:

8 Waste Action Project
9 Attn: Greg Wingard
10 P.O. Box 9281,
11 Covington, WA 98042
12 E-mail: gregWAP@earthlink.net

13 Notifications required by this Consent Decree to be made to Willis shall be mailed or e-
14 mailed to:

15 Todd Charlton
16 Willis Enterprises, Inc
17 PO Box 457
18 Oakville, WA 98568

19 And to:

20 Tisha Pagalilauan
21 Cascadia Law Group PLLC
22 1201 3rd Avenue, Suite 320
23 Seattle, WA 98101
24 tpagalilauan@cascadialaw.com

25 Notifications required by this Consent Decree to be made to the Port shall be mailed or e-
26 mailed to:

27 Executive Director
28 Port of Grays Harbor
29 P.O. Box 660

1 Aberdeen, WA 98520

2 And to:

3 Arthur A Blauvelt III
4 Ingram, Zelaski & Goodwin, LLP
5 120 East First Street
6 Aberdeen, WA 98520
7 blauvelt@izglaw.com

8 A notice or other communication regarding this Consent Decree will be effective when
9 received unless the notice or other communication is received after 5:00 p.m. on a business day,
10 or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the
11 next business day. A notice or other communication will be deemed to have been received: (a) if
12 it is delivered in person or sent by registered or certified mail or by nationally recognized
13 overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the
14 receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a
15 change in address for which no notice was given, then upon that rejection, refusal, or inability to
16 deliver.

17 Dated this 12th day of September 2022.

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21 _____
22 Tana Lin
23 United States District Judge
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Presented by:

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